

Town of Wenham
BOARD OF SELECTMEN
Meeting of Tuesday, January 8, 2013~ 7 PM
Wenham Town Hall, 138 Main Street

Minutes Approved January 22, 2013

Pursuant to MGL Chapter 30A, written notice posted by the Town Clerk and delivered to all Board members, a meeting of the Board of Selectmen was held on Tuesday, January 8, 2013 at 7 P.M. in the Selectmen's Meeting Room.

With a quorum present, Ms. Martins called the Board of Selectmen meeting to order at 7 pm
Selectmen Present: Molly Martins, Chair; Patrick Wilson, Vice Chair; Ken Whittaker, Secretary
Also Present: Mark Andrews, Interim Town Administrator; Catherine Tinsley, Minutes Secretary

Public information
Agenda

Abbreviations
BOS Board of Selectmen

Welcome and Overview of the Agenda
Statements or Questions by the Public

Old Business Richdale Package Store License Public Hearing Continuance
Present: Board of Selectmen acting as the Licensing Board for the Town of Wenham
Mark Lanza, Special Counsel to the Town of Wenham
Albert Abdelmalak, applicant and his Attorney, Tom Truax

Ms. Martins opened the public Hearing at 7:09 pm and read the legal ad as published:

TOWN OF WENHAM OFFICE OF THE BOARD OF SELECTMEN Notice of Public Hearing \REQUEST FOR A RETAIL LIQUOR LICENSE The Board of Selectmen of the Town of Wenham will be conducting a public hearing as required by Massachusetts General Laws, Chapter 138 as amended. The subject of the hearing concerns the request for a new retail liquor license. Notice is hereby given that Richdale has applied for a Retail Liquor License for Sale of Wine and Malt Beverages, Not to Be Drunk on the Premises. Said license to be exercised at Richdale, 143 Topsfield Rd, Wenham, MA 01984. Residents, as well as all interested persons are invited to attend the hearing to be held on, Tuesday December 18, 2012 at 7 PM at Wenham Town Hall, 138 Main Street. Oral and signed written testimony may be submitted at this time.

Mr. Wilson reviewed that at the last meeting on December 18, 2012, the hearing for a package store liquor license for Albert Abdelmalak, Richdale, at 143 Topsfield Road, was opened and that this was a continuation of that hearing. Attorney Truax spoke on behalf of the applicant, after which the hearing was opened for comments from the public.

The BOS acknowledged the receipt of two additional letters since December 18, 2012, saying one letter was in favor (Francis Toomey, Burnham Road) of the license and one letter opposed (Mildred Bromley, Maple Street).

Mr. Wilson stated that the zoning of 143 Topsfield Road was questioned at the last meeting. Attorney Mark Lanza informed the BOS that the zoning history of the site is relative to retail liquor sales. The primary source of information was obtained from the town records on the property dating back to 1946. He explained that although the property is not zoned under this specific use, the current retail operation is a non-conforming use, is "grandfathered", and therefore is lawful. Wenham zoning bylaws broadly define the term "retail" to include the sale of beer and wine; therefore there is no need to further question conformance with zoning.

The hearing was opened to the public for additional comments related to the application.

Mr. Wilson talked about the criteria, outlined in the Regulations for the Licensing Board, that are used in making this decision

1. If there is a (demonstrated) need for the use at this location
2. Zoning conformance
3. Public safety issues
4. Opinions of the neighbors should be taken into consideration by the licensing board, but are not determinative

Dave St Laurent, Virginia Place stated that he has seen the store change hands many times and that Albert is a responsible, conscientious person, who tries to do the right thing. He has improved the cleanliness and order of the store, and as a convenience store, he supported the sale of beer and wine.

Todd Michaud, Morgan drive in Danvers was at last meeting, reiterated the intersection has been improved, the parking lot is well lit, and that a convenience store providing beer/wine would be an asset to the neighborhood. He also added that Albert has shown he is responsible, and can handle the license.

Charlie Thompson Meridian Road, who spoke previously at the previous hearing, responded to concerns of falling property values by suggesting that beer and wine sales will most likely not draw additional outside business, and that he does not feel the property values will change.

Louis Terranova, Maple Street abutter, commented that the character of the owner is not in question. He asked why the Town would take the chance that the selling of beer and wine would increase trash, or change the character of Wenham. He asked the Board to consider the opinions of the neighbors.

Gerry Donnellan, Topsfield Road, observed that there are other places that sell beer/wine a few miles in each direction in other neighborhood stores, and suggested that people will probably not travel too far to buy beer/wine and this would be a convenience to the neighborhood. He encouraged the board to approve the license, adding he hopes it keeps Richdale in the neighborhood.

Mr. Truax was given time to comment. He said the advertising of beer and wine will be limited to a sign in the window. He responded to a few concerns, saying that this would most likely not affect real estate values in the vicinity. This is a beer/wine license not a liquor store license, noting that beer/wine is sold in many grocery stores. This license limits the space to a small area, which will be located in the rear of the store. He closed by saying that the owner is deserving of the license and will not let the town down, adding the BOS hold the power to revoke the license.

VOTE: Mr. Wilson moved to close the public hearing and move to deliberation. Mr. Whittaker seconded and the motion carried unanimously.

Mr. Wilson stated as the Licensing Board, the Selectmen must abide by laws and regulations. He stated the decision making process is somewhat limited and must be made based on criteria.

He reviewed there are no zoning issues that would interfere with beer/wine sales at this store. There are no public safety concerns identified by the Wenham Police Department, and with no package store in Wenham, the need has been shown. The only responsible decision for the Board was to approve the license.

Mr. Wilson added that the Selectmen understand the concerns of the neighborhood. He observed that similar concerns were raised by the neighbors of the Tea House, but no apprehensions were ever realized. Given totality of all considerations, the BOS will be monitoring this carefully. The BOS asked that a public hearing with the owner be scheduled in six months, including proper notice to abutters, and published notice at the applicant / license holder's expense. The license must be renewed annually.

VOTE: Mr. Wilson moved that the Selectmen, acting as the Licensing Board, grant a Retail Liquor License for the Sale of Wine and Malt Beverages, Not To Be Drunk on the Premises to Albert Abdelmalak, and that said license to be exercised at Richdale, 143 Topsfield Rd, Wenham, MA. from 10 am to 9 pm, based on provisions of the state laws, and that the applicant agrees to a six month review, pending the scheduling by the Selectmen, with proper notification of a public hearing. Mr. Whittaker seconded and the motion carried unanimously.

New Business

Open Annual Town Meeting Warrant – April 6, 2013

Ms. Martins announced the 2013 annual town meeting is April 6, 2013 at 1 pm. All elections will be held on April 11, 2013. This differs from previous years when the elections were held on the same day as the annual town meeting.

Citizen petitions will now be accepted. The warrant will be closed in early March.

VOTE: Mr. Whittaker moved to open the warrant for the April 6, 2013 Annual Town Meeting. Mr. Wilson seconded and the motion carried unanimously.

Town Government Study Committee – Update

Present: Paul Weaver, Government Study Committee

Mr. Weaver updated the BOS regarding the progress of the Committee. A Status Report was previously provided to the Board.

With assistance from the law offices of Kopleman & Paige, a draft of the "Special Act" is being written and is expected to be forwarded to the BOS by the end of the week.

Mr. Weaver talked about the style of the report, noting that comments and alternatives are identified within the report. The suggestion was for the BOS to review the Status Report before the January 22, 2013 meeting and submit comments. A Public Hearing would be scheduled during February or March. It was suggested an executive summary be prepared for the public. Mr. Weaver noted that the study is a clarification of past practice, and authority / responsibility of positions. The BOS requested a meeting with the Government Study Committee next week.

Open Meeting Law – Remote Participation Policy

Present: Paul Weaver, Town Counsel

Mr. Whittaker announced a resolution of policy on the state level to permit town committee/ boards to participate in meetings remotely. Mr. Weaver explained that the Open Meeting Law (OML) recently changed to allow remote participation as a local option permitted by vote of the BOS, and must be inclusive of all town boards/ committees with the following requirements:

- Notify Chair and request the right to participate remotely due to illness, geographic distance, and military
- The Chair of the board / committee must be present
- There must be a quorum present at the posted meeting; remote participation does not count in the determination of a quorum.
- All votes must be made by roll call votes
- Only audio participation is required, but all attending the meeting must be able to hear; it is not necessary to have visual contact
- The BOS have the ability to further restrict, define the policy through a local bylaw

It was questioned if hearing alone is satisfactory during a visual presentation, especially if a vote is required based on visual information. It was also noted that visual material could be sent via Internet.

Ms. Martins suggested a 6-month review of the policy to evaluate its effective use, and to identify and address issues as they come up.

VOTE: Mr. Wilson moved the BOS vote pursuant MGL to authorize members of all public bodies to participate in public meetings remotely. Mr. Whittaker seconded and the motion carried unanimously.

Mr. Andrews was asked to put this on a future agenda for review.

Used Car Sale License Renewal

VOTE: Mr. Wilson moved the BOS approve the applications for Used Car Sale License, to buy, sell, or exchange at

34/36 Arbor Street – Freeman's Garage

60 Maple Street – Burnett's Garage

233 Main Street – Fallon's Auto Service Inc.

Mr. Whittaker seconded and the motion carried unanimously.

Hamilton Development Corporation

Hamilton has asked if Wenham wants to participate in a study of alternatives for development of Hamilton's downtown area. It is unknown at this time what part Wenham would have in the study, what the group wants to achieve, future decisions are to be made, or who the representing party would be. Clarity from Hamilton has been requested.

Mr. Andrews was directed to express a willingness to be involved and attempt to determine how Wenham would be most effective.

Reports

The School Committee asked Mr. Andrews serve on the Capital Project Committee along with the School Superintendent, the Hamilton Town Manager, and both town Department of Public Work Directors. Mr. Andrews expressed a willingness to serve. Duties will include scheduling projects (except the Cutler School Roof project which is under the MSBA).

A draft is being created of the projects / costs that will be included in the \$1.5 million capital project account approved at town meeting.

Fire Study – Update

Mr. Whittaker stated that the Fire Study Report is essentially complete. The final draft will be presented /distributed to the BOS at the BOS Meeting of January 22, 2013.

Mr. Wilson reported that the Hamilton/ Wenham Pool Committee met recently and discussed what might be accomplished at Patton Park, and what is feasible. The cost is a concern and the committee continued to address this during the meeting, with the understanding that although the pool is an asset to the towns of Hamilton and Wenham, it is only used on average 10 weeks a year, and with only limited funds availability. The priority of preserving the pool and facilities must be established.

Executive Session - Minutes

The BOS will review the executive session minutes of the past year to determine if they are ready for public release, including assessing if the reason for which the executive session was held no longer exists. This will be addressed at the next meeting.

Mr. Wilson asked for an update on the Finance Department. Mr. Andrews reported that the preliminary draft budget finance binders have been delivered to the Finance Committee members. The (Baystate) consultants worked through weekend/holidays to keep on the budget schedule.

Minutes Approval – December 18, 2012 & December 27, 2012

VOTE: Mr. Whittaker moved to accept the December 18, 2012 minutes as written. Mr. Wilson seconded and the motion carried unanimously.

VOTE: Mr. Whittaker moved to accept the December 27, 2012 minutes as amended. Mr. Wilson seconded and the motion carried unanimously.

The BOS are scheduled to meet on January 22, 2013, and February 5th and 19th, 2013.

VOTE: Mr. Whittaker moved to adjourn at 8:33 pm and it was unanimous to do so.

Respectfully submitted by

Catherine Tinsley